



STATE OF MICHIGAN

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GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
OFFICE OF FINANCIAL AND INSURANCE REGULATION  
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COMMISSIONER

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DIRECTOR

## BILL ANALYSIS

**BILL NUMBER:** HB 4542 (H-5)

**TOPIC:** Civil procedure; foreclosure; mortgage modification negotiation procedures; modify.

**SPONSOR:** Representative Jeff Farrington

**CO-SPONSORS:** Representatives Peter Pettalia, Lisa Lyons, Marty Knollenberg, and Lesia Liss

**BILL NUMBER:** HB 4543 (H-6)

**TOPIC:** Civil procedure; foreclosure; mortgage modification negotiation program procedures; modify.

**SPONSOR:** Representative Peter Pettalia

**CO-SPONSORS:** Representatives Lisa Lyons and Jeff Farrington

**BILL NUMBER:** HB 4544 (H-3)

**TOPIC:** Civil procedure; foreclosure; redemption period; modify for certain residential and nonfarm property.

**SPONSOR:** Representative Lisa Lyons

**CO-SPONSORS:** Representatives Peter Pettalia, Jeff Farrington, and Marty Knollenberg

**COMMITTEE:** Committee on Banking and Financial Institutions

**Analysis Done By:** Office of Financial and Insurance Regulation;  
December 13, 2011

## **ADMINISTRATION POSITION**

The Administration supports this legislation.

## **PROBLEM/BACKGROUND**

In response to the devastating effect the mortgage crisis was inflicting upon homeowners, the Michigan legislature adopted mortgage foreclosure modification legislation in 2008 designed to mitigate its impact. The legislation made changes in the foreclosure modification program designed to help homeowners stay in their homes.

Since 2008, the value of Michigan's real estate market has declined substantially, with many homeowners owing more on their homes than they are worth. When combined with high unemployment rates, energy prices, consumer debt and stricter credit granting guidelines by financial institutions, home foreclosures continue to be a problem in Michigan.

According to RealtyTrac, in September, 2011, there was one foreclosure filing for every 149 homes in Michigan. Michigan also had the seventh highest foreclosure rates and foreclosure filing totals in the third quarter compared with other states. Now that financial institutions are beginning to work through the back log of home mortgage paperwork, Michigan is starting to see a surge in foreclosures.

## **DESCRIPTION OF BILLS**

House Bills 4542 (H-5), 4543 (H-6) and 4544 (H-3) all amend Chapter 32 of the Revised Judicature Act by requiring that prior to the beginning of foreclosure proceedings, a written notice be served on the borrower that includes a list of housing counselors. If enacted, the mortgage holder or mortgage servicer shall designate and authorize an individual to facilitate negotiations and attend meetings with the borrower. This notice shall give the name, address, a dedicated telephone number and a dedicated electronic mail address of the designated person.

In HBs 4542 (H-5) and 4543 (H-6), after the party foreclosing the mortgage has mailed a foreclosure notice to mortgagor, the mortgagor has 30 days to request a meeting (directly or through a housing counselor) with a designated authorized person of the party foreclosing the mortgage. If the borrower requests a meeting, foreclosure proceedings will not commence until 90 days after the mailing day of the written notice. After being contacted by the borrower or housing counselor, the party foreclosing the mortgage has 10 days to request the borrower to provide any necessary documents to determine eligibility for loan modification. If the party foreclosing the mortgage has not been provided with documents requested from the

mortgagor within 60 days after the mailing of the foreclosure notice and the time for producing the documents has expired, the foreclosure proceedings can continue.

Once the meeting takes place, the designated person shall provide the borrower with loan calculations within 10 days. Upon request by the borrower, a copy of the program, process or guidelines of the modification shall also be provided.

The provisions articulated in both bills sunset December 31, 2012. The proceedings under chapter 32 apply to the first notice that the mortgage will be foreclosed by sale published after July 5, 2009 and before December 31, 2012. This notice must be mailed to the borrower on or after February 1, 2012.

Every notice of foreclosure by advertisement shall include a statement that the borrower will be held responsible to the purchaser of the property at the sale or the mortgage holder for any damage done to property during the redemption period.

The borrower must also be informed of the number of days in the redemption period and the planned sale date. After the sale, the borrower must be informed when the redemption period starts if the property has not been abandoned.

A person who is not on the list of housing counselors shall not perform the duties of a housing counselor. If a person is found in violation, he or she is guilty of a misdemeanor punishable by not more than 90 days imprisonment, a fine of not more than \$2,000.00, or both. An attorney who is licensed in this state and provides mortgage assistance relief services as part of his or her law practice is not required to be on the list of housing counselors to provide mortgage relief assistance.

House Bill 4544 (H-3) amends Chapter 32 of the Revised Judicature Act and adds a redemption period of one year for property used for agricultural purposes.

There will be a presumption by the mortgage holder that the property is not used for agriculture if the mortgagor does not provide the mortgage holder proof before the mortgage sale that the mortgagor filed a schedule F on the mortgagor's 1040 federal income tax form for the year preceding the foreclosure proceedings.

Either party to this foreclosure may file a civil action to produce evidence to rebut this presumption. If the property is used for agricultural purposes and the mortgage holder has filed a schedule F on the mortgagor's 1040 federal income tax form for the year preceding the foreclosure proceedings, the redemption period is 1 year from the date of sale.

## SUMMARY OF ARGUMENTS

### *Pro*

The legislation continues to provide tools to homeowners that can help them avoid foreclosure. When foreclosures are prevented, homes are not vacated, neighboring properties do not lose as much value, townships, cities and counties do not lose the tax base provided by these homes. With this avoidance of an eroding tax base, public services are maintained. When foreclosures are avoided, the stability of these communities is maintained.

When the mortgagor and the designated person are provided a mechanism to work out a modification in order to avoid foreclosure, a mortgagor has the opportunity to qualify for loan modifications. This may include an interest rate reduction, principal forbearance and other modifications designed to make monthly payments more affordable. When the loan is refinanced, there is a much better chance that the investors will be paid and the home owner has a better chance of maintaining possession.

### *Con*

## FISCAL/ECONOMIC IMPACT

Are there revenue or budgetary implications in the bill to the -

### (a) Department

Budgetary:

Revenue:

Comments:

### (b) State

Budgetary:

Revenue:

Comments:

### (c) Local Government

Comments: The process required by these bills could reduce the loss in property tax value for local governments.

## OTHER STATE DEPARTMENTS


### ANY OTHER PERTINENT INFORMATION

House Bill 4536 amends the Revised Judicature Act, 1961 PA 236, by extending the sunset provision by 18 months, from January 5, 2012 until July 5, 2013, for the ability for modification of residential mortgage loans to occur.

House Bill 4417 amends the Revised Judicature Act, 1961 PA 236 by calling for the complete elimination on the sunset language and applies to proceedings after the first foreclosure notice is sent under MCL 600.3208.

House bills 4542 (H-5), 4543 (H-6) and 4544 (H-3) passed the House on December 8, 2011, with 108 yea votes and 0 nay votes.

### ADMINISTRATIVE RULES IMPACT

  
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R. Kevin Clinton  
Commissioner

12/13/11  
Date